

Child Custody

Q. Do mothers automatically get custody of their children when a separation occurs?

A. The courts of most states, including North Carolina, do not establish an automatic preference for either mother or father, but they do look very closely at which parent will best promote the welfare and interests of the children of the couple.

Q. What kinds of factors do the courts consider in granting custody?

A. They usually look at who has primarily taken care of the child during the marriage (washing, feeding and clothing the child, for example, or helping the child with homework), who has the best approach to discipline, who has cared for the child since separation (if the couple has already separated), what work schedules either or both parents have, and how each parent can provide for the physical, emotional, educational, religious and social needs of the child.

Q. Can a legal assistance attorney help me get a court decree for custody?

A. No. You will need to retain a civilian attorney for the preparation of the papers and the appearance in court.

Q. Can the court award attorney's fees to me in a custody case?

A. Under North Carolina law, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, it is possible (but not mandatory) for the court to award reasonable attorney's fees as part of the custody order.

Q. Do I have to file for custody in North Carolina?

A. No. While usually a custody suit is filed where the child is presently residing, a person can file an action involving custody of a minor child in the "home state" of the child (i.e., where the child has lived for the last six months) or in any state where the child and one parent have substantial and significant contacts and connections (such as former neighbors, teachers, doctors, relatives and so on).

Q. Can a custody order be changed?

A. No custody order is ever "permanent." However, once a parent is awarded custody in a court order, the judge can change the custody order only if there is a substantial change in circumstances since the time of entry of that prior order. Usually it must be proven that the change has a direct and adverse effect on the children.

Q. Will my separation agreement protect me from the other parent snatching my child?

A. No. A separation agreement is only a contract between you and the other parent, not a court order. A court order is enforceable by contempt of court. Court orders of one state can be filed and registered in another state and thus be treated as if they were issued by the second state for purposes of enforcement. None of this applies to separation agreements.

Q. If my spouse is granted custody, will I get visitation rights?

A. Ordinarily the non-custodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the non-custodial parent has a history of abusing the child. Visitation can be flexible and unstructured, assuming the parties can get along and agree on the times and terms of visitation, or it can be highly structured and rigid, with certain days and times set out with great specificity.

Q. Can I register a court order from another state here in North Carolina so that North Carolina can treat it as one of its own decrees for purposes of enforcement?

A. Yes. You may file and register the other state's decree with the Clerk of Superior Court at any county courthouse. You may want to register the decree in the county where you reside or in the county where the other parent lives.

Q. If the other parent does not like the present custody order, can he or she file for custody in another state?

A. Under the Uniform Child Custody Jurisdiction Act, which has been passed and made law in almost every state, the court in a custody case must always inquire into whether the child or children have been the subject of custody litigation in any other state. When a judge finds that another court has made an award of custody, the judge should refuse to rule on the case and refer the parent to the court that originally entered the custody order. Only if that original court no longer has jurisdiction and has released or transferred jurisdiction to the new state court may that court assume jurisdiction to hear the custody case (unless there is an immediate and clear emergency affecting the child's welfare).

Q. Won't custody be settled when I obtain a divorce?

A. Divorce decrees do not necessarily settle custody matters, and a custody order can be entered before or after a final decree of divorce in North Carolina.